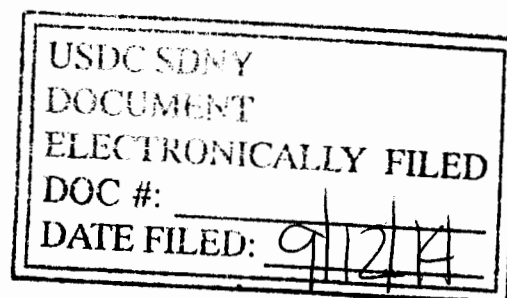


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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DEWITT STERN GROUP, INC.,

Plaintiff,

- against -

13 Civ. 3060 (RWS)

OPINION

RICHARD EISENBERG and ARTHUR J.
GALLAGHER RISK MANAGEMENT SERVICES,
INC.,

Defendants.

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A P P E A R A N C E S:

Attorney for Plaintiff DeWitt

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Sweet, D.J.

Defendants Richard Eisenberg ("Eisenberg") and Arthur J. Gallagher Risk Management Services, Inc. ("AJG," together with Eisenberg, "Defendants") have moved for a pre-motion conference to request (1) an order bifurcating discovery initially limited to plaintiff DeWitt Stern Group Inc.'s ("DeWitt" or "Plaintiff") theory that DeWitt purchased Eisenberg's book of business or, in the alternative, (2) to compel DeWitt to produce all responsive discovery, including but not limited to discovery relating to electronically stored information ("ESI") and emails.

For the reasons set forth below, Defendants' motion is denied in part and granted in part.

Prior Proceedings & Facts

The procedural history and facts underlying this action were previously set forth in opinions by this Court dated October 29, 2013 and April 9, 2014. (See Docket Nos. 39, 57.) Knowledge of the general background of this case is assumed. The instant motion was heard and marked fully submitted July 2, 2014.

Discussion

Defendants' Motion To Bifurcate Discovery Is Denied

Rule 42 of the Federal Rules of Civil Procedure allows a court to order separate trials “[f]or convenience, to avoid prejudice, or to expedite and economize” with regard to “separate issues, claims, crossclaims, counterclaims, or third-party claims.” Fed. R. Civ. P. 42(b). This rule, however, pertains only to the bifurcation of trials, not the bifurcation of discovery that Defendants seek. See, e.g., Koch v. Pechota, 10 Civ. 9152, 2012 WL 2402577, *6 (S.D.N.Y. June 26, 2012).

Defendants argue that the question of whether DeWitt purchased Eisenberg’s book of business is a threshold question on which DeWitt’s breach of contract and unjust enrichment claims depend. (Def.’s June 13, 2014 Letter at 2.) This question, however, is not the type of issue or claim contemplated by Rule 42. In fact, the cases cited by Defendants in support of their request deal solely with the separation of

distinct causes of action into separate trials.¹ As such, Defendants' request for bifurcation of discovery is denied.

Defendants' Motion To Compel Is Denied

Defendants argue, in lieu of bifurcation, that DeWitt should be compelled to produce documents responsive to Defendants' Document Request Numbers 26, 27, 28, 56 and 57, limited to Eisenberg's book of business as DeWitt intends to define it and responsive email documents pursuant to the search term and custodian list that DeWitt first proposed in October 2013. (Defs.' June 13, 2014 Letter at 7.) Plaintiff objects to Defendants' document requests on the basis that they are overbroad and burdensome.

Rule 26 of the Federal Rules of Civil Procedure allows parties to obtain discovery "regarding any matter, not privileged, that is relevant to the claim or defense of any

¹ See Oorah, Inc. v. Schick, 552 Fed. App'x. 20 (2d Cir. 2014) (affirming the bifurcation of two separate claims, one to proceed to a bench trial, the other to a jury trial); Amato v. City of Saratoga Springs, N.Y., 170 F.3d 311 (2d Cir. 1999) (affirming lower court's decision to bifurcate claims against individual police officers on the grounds that, if the jury found liability on the part of either of the officers, trial against the city and the police department would immediately commence with the same jury); Ismail v. Cohen, 706 F. Supp. 243 (S.D.N.Y. 1989) (severing Section 1983 claims against the City of New York, to be tried separately).

party." Fed. R. Civ. P. 26(b)(1). The relevance standard is broad in order "to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). "The broad standard of relevance, however, is not a license for unrestricted discovery." Gucci America, Inc. v. Guess?, Inc., 790 F. Supp. 2d 136, 140 (S.D.N.Y. 2011). "Rule 26 vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery." Crawford-El v. Britton, 523 U.S. 574, 598 (1998).

Defendants' argue, as a threshold matter, that DeWitt has waived its right to object "given its unabated delay to review or produce any responsive emails." (Defs.' June 13, 2014 Letter at 6 (emphasis in original).) Defendants' are correct that failure to raise timely objections generally results in a waiver of those objections. Williams v. Nat'l Hous. Exch. Inc., 165 F.R.D. 405, 409 (S.D.N.Y. 1996). However, in this case, Defendants' served their document requests in July and August 2013, while Plaintiff served written objections and responses on August 21, 2013, based upon relevance, over breadth, and undue burden, the same objections Plaintiff raises, in part, in the

instant motion. (Pl.'s June 20, 2014 Letter at 5.) As such, Plaintiff's objects are deemed not to have been waived.

Each of Defendants' document requests will be addressed in turn.

Document Request 26

Document Request 26 seeks "[a]ny and all documents concerning any client that Mr. Eisenberg serviced, solicited or developed during his employment with DeWitt, including, but not limited to, any support provided by DeWitt to Mr. Eisenberg in furtherance of such service, solicitation or development." Plaintiff argues that to review "every record relating in any way to Eisenberg's servicing of clients at Dewitt during the five (5) ½ years he worked there, identifying privilege issues with respect thereto, and redacting confidential information contained therein" is an "extraordinary burden." (Pl.'s June 20, 2014 Letter at 6.)

Document Request 26 shall be modified in the following manner: "Any and all documents concerning any support provided

by DeWitt to Mr. Eisenberg in furtherance of service, solicitation, or development of clients."

Document Request 27

Defendants' twenty-seventh request seeks "[a]ny and all documents concerning Mr. Eisenberg's sale of insurance products on behalf of DeWitt, including, but not limited to: (a) any sales figures; (b) any company-wide metrics; (c) any correspondence between Mr. Eisenberg and the clients he serviced for DeWitt; and (d) any performance evaluations (both from DeWitt and Mr. Eisenberg's clients). Plaintiffs again object to this request on the basis that it is overbroad and unduly burdensome.

Document Request 27 shall be modified in the following manner: "Any and all performance evaluations (both from DeWitt and Mr. Eisenberg's clients)."

Document Request 28

Document Request 28 seeks "[a]ny and all documents concerning the sale of insurance products by any person in

DeWitt's entertainment and media division other than Mr. Eisenberg, including, but not limited to: (a) any sales figures; (b) any company-wide metrics; (c) any correspondence between any DeWitt employee and the clients serviced for DeWitt; and (d) any performance evaluations (both from DeWitt and its clients). Plaintiff again objects on the ground that the request is overbroad and unduly burdensome. Plaintiff further argues that the sale of insurance by any other person in DeWitt's entertainment and media division is irrelevant "to whether Eisenberg violated his contract by soliciting business he serviced while at DeWitt, or whether DeWitt should be entitled to relief as against him because of his conduct otherwise." (Pl.'s June 20, 2014 Letter at 8-9.)

Document Request 28 is modified to request any performance evaluations by DeWitt or its clients.

Document Request 56

Document Request 56 seeks "[a]ny and all documents concerning the basis for the allegations in paragraph 3 of the Johnson Decl. that '[Mr. Johnson] and everyone else in management at DeWitt take our responsibilities to our clients

and our employees very seriously. We believe we should treat them with the utmost dignity and respect, and we believe we should be treated in the same manner.' This request shall include, but is not limited to, any documents where DeWitt's clients were not treated 'with the utmost dignity and respect.'" Plaintiff again objects to this request as overbroad and unduly burdensome.

Document Request 56 is modified to request any documents referring to treatment of clients without dignity or respect.

Document Request 57

Document Request 57 seeks "[a]ny and all documents concerning any DeWitt client that voluntarily elected to cease doing business with DeWitt for any reason." Plaintiff again objects to this request as overbroad and unduly burdensome.

Document Request 57 is modified in the following manner: "Any and all documents identifying any DeWitt client that voluntarily elected to cease doing business with DeWitt during Mr. Eisenberg's employment."

Conclusion

For the reasons stated above, Defendants' letter motion is denied in part and granted in part.

It is so ordered.

New York, NY
September 11, 2014



ROBERT W. SWEET
U.S.D.J.